



October 11, 2001

Mr. John Steiner
Law Department
City of Austin
P.O. Box 1546
Austin, Texas 78767-1546

OR2001-4615

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153146.

The City of Austin Police Department (the "city") received two requests for information relating to victims of sexual assaults.¹ You state that the city will release some of the information that is responsive to the second request.² You claim that other information to which both requestors seek access is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the representative samples of information you submitted.³

¹The first request is for information concerning sexual assaults and rapes from January 1, 2000, through the beginning of June, 2001, separated into attacks against children and adults, respectively, and including, if possible, the sex and age of the victim. The second request is for information about reported rape and sexual assault victims in 2000 and 2001, including the victim's age, race, and gender, the block and street of the incident, the ZIP code, the case number, and the disposition of the case.

²You state that the city will release to the second requestor the block and street of the incident, zip code, case number, and disposition of the case. You explain that the city previously released to the first requestor the types of offense, date, hour, block number, street name, and the percentage breakdown of adults versus children as the victims.

³This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the city to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that the age, race, and gender of these sexual assault victims is confidential under section 552.101 in conjunction with the common law right of privacy. Information must be withheld from disclosure under section 552.101 in conjunction with common law privacy when the information (1) is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. See *Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 393 (1983), this office determined that information that either identifies or would tend to identify a sexual assault victim is protected by common law privacy. *Id.* at 2; see also Open Records Decision No. 339 at 3 (1982). You assert that these sexual assault victims could possibly be identified if their age, race, and gender information is disclosed. Having considered your argument and carefully reviewed the information at issue, we conclude that you have not demonstrated that the disclosure of this information would reveal the identity of a sexual assault victim. Therefore, this information is not excepted from disclosure under section 552.101 in conjunction with common law privacy.

Section 552.101 also protects information that another statute makes confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert that some of the information at issue is confidential under section 261.201(a) because it relates to an investigation of sexual assault of a child. We conclude, however, that this information does not constitute files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. Thus, this information is not confidential under section 261.201 of the Family Code and therefore may not be withheld under section 552.101 of the Government Code.

In summary, none of the information at issue is confidential under section 552.101 of the Government Code in conjunction with either common law privacy or section 261.201 of the Family Code. Therefore, this information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

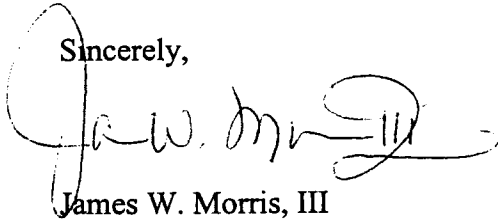
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "J.W. Morris III", with a large, stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 153146

Enc: Submitted documents

c: Ms. Claire Osborn
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